

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
DECEMBER 15, 2016

Gambling Control Board Conference Room  
Department of Public Safety  
45 Commerce Drive, Augusta, Maine

Commission Members Present: William Varney, Chair, Gary Reed, William McFarland and Michael Graham

Commission Member Absent: Alexander Willette

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Miles Greenleaf, Dennis May and Zachary Matzkin

**1. Call the Meeting to Order and Introductions:** William Varney, Chair

**2. Review and Approval of Decision and Orders**

Commissioner Varney asked for a motion on the decision and order for Mark Harris complaint number 2016 MSHRC 16. Commissioner Graham made a motion to approve the decision and order for Mark Harris complaint number 2016 MSHRC 16. Commissioner Reed seconded. Vote 3-0.

Commissioner Varney asked for a motion on the decision and order for Jocelyn Desfosses complaint number 2016 MSHRC 17 & 20.

Commissioner McFarland made a motion to approve the decision and order for Jocelyn Desfosses complaint number 2016 MSHRC 17 & 20. Commissioner Reed seconded. Vote 4-0.

Commissioner Varney asked for a motion on the decision and order for 2017 Renewal Licenses and Assignment of Race Dates, Authorization to simulcast, and Sire Stakes. Commissioner Reed made a motion to approve the decision and order for 2017 Renewal Licenses and Assignment of Race Dates, Authorization to simulcast, and Sire Stakes. Commissioner McFarland seconded. Vote 4-0.

Commissioner Varney asked for a motion on the decision and order for 2017 Renewal of Licenses for Off-Track Betting Facilities. Commissioner Graham made a motion to approve the decision and order for 2017 Renewal of Licenses for Off-Track Betting Facilities. Commissioner Reed seconded. Vote 4-0.

**Review and Approval of Minutes for May 16, 2016; June 9, 2016; June 24, 2016**

Commissioner Varney asked for a motion on the minutes for May 16, 2016, June 9, 2016, and June 24, 2016. Commissioner McFarland made a motion to approve the minutes for May 16, 2016, June 9, 2016, and June 24, 2016. Commissioner Reed seconded. Vote 4-0.

**3. Appeal of Presiding Judge Decision:**

- a. Appeal from Wil DuBois concerning Complaint Number 2016 MSHRC 14. Mr. Dubois is appealing the July 7, 2016 decision of Presiding Judge Ed Kelleher in which Judge Kelleher assessed a \$500 fine for failing to submit his horse "When In Doubt" to the testing barn before leaving the paddock. Wil DuBois was not present. AAG, Guay asked Mr. Jennings if Mr. DuBois knew about the appeal hearing for today. Mr. Jennings stated yes. AAG, Guay asked Mr. Greenleaf what his statement is of how Mr. DuBois knew about the hearing. Mr. Greenleaf stated that Mr. DuBois did not receive the notice within the 10 days, so he contacted Dennis May, State Racing Steward, to see if Mr. May could get in touch with Mr. DuBois. Mr. May brought Mr. DuBois into his office and called Mr. Greenleaf. Mr. Greenleaf asked Mr. DuBois if he would waive his right for the 10 day notice. Mr. DuBois stated yes. AAG, Guay asked Mr. Greenleaf if Mr. DuBois admitted to receiving the notice. Mr. Greenleaf stated that he did receive the notice because Mr. DuBois did sign for the notice. AAG, Guay stated that Mr. DuBois did arrive to hear the appeal. AAG, Guay qualified the Commissioners. He asked Mr.

DuBois if he objected to the notice being sent out late. Mr. DuBois stated no. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer License Application; Exhibit 3, Race Program; Exhibit 4, Scarborough Ruling; Exhibit 5, Appeal Form, and Exhibit 6, Subpoenas. Mr. DuBois did not object to the exhibits. AAG, Guay admitted the six exhibits. Mr. Jennings called Dr. Smith as a witness. AAG, Guay gave Dr. Smith her oath. Mr. Jennings asked questions of Dr. Smith. AAG, Guay gave Mr. Malia his oath. Mr. Jennings asked questions of Mr. Malia. Mr. Malia stated that the trainer of record is William DuBois and not Wil DuBois. AAG, Guay asked Mr. Jennings based on what he just heard does the department have a recommendation on how to proceed. Mr. Jennings moved to continue the case. AAG, Guay suggest deliberation on whether or not who the correct person should be. He asked for the purposes of deliberation he said at some point Wil DuBois became the trainer of the day for the horse. Mr. Malia stated in lieu of the legal argument he agreed that Wil DuBois was the trainer of the day. Commissioner Graham stated that he cannot see how they can continue a hearing on someone that had never got noticed. Commissioner Varney agreed with Commissioner Graham. AAG, Guay stated that you can look at this issue right now or you can wait until the next hearing. The question is whether or not this man or the trainer of record would be subject to a fine for conduct for the day in question. AAG, Guay stated procedurally can William DuBois be found responsible on the day of the event. Mr. Malia stated that the trainer of record regardless of who substitutes for him is always liable for what happens to the horse. Commissioner Graham stated that he thinks they both should be fined. Mr. Malia stated that every trainer in Maine knows that when they are absent they remain responsible for the horse. AAG, Guay stated that he is not sure how Wil DuBois can come back and be retroactively fined if he wasn't fined on the day. He is also going to state that in terms of conduct as an attorney going in front of a Superior Court Judge how we can defend imposing a fine on someone whose conduct was not in question on the day of the proceeding. It is very difficult to understand how someone who is taking the place of the trainer on the day who acts independently of their own judgement, let's say he removed the tag and removed the horse, unless he was under orders by the trainer of record how the trainer of record could be culpable of that. With that he continued the hearing.

#### 4. **Adjudicatory Hearings:**

- a. **RE: Michael Hitchcock, Complaint Number 2016 MSHRC 15.** Mr. Hitchcock is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Hitchcock is trainer of record for the horse "Electric Chapel N". A pre-race blood sample obtained from Electric Chapel N prior to the Eighth Race at the Windsor Fair on August 28, 2016 disclosed the presence of Total Carbon Dioxide at an elevated level. AAG, Guay stated that Mr. Hitchcock and Mr. Bobrow were present. He asked both parties if there were any objections to the proceedings. There were none. He asked Mr. Jennings to present the exhibits. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Lab Certificate of Analysis, and Exhibit 8, Chapter 19. AAG, Guay admitted the exhibits without objection. He gave Mr. Hitchcock his oath. Mr. Hitchcock stipulated to being the trainer of record of the horse Electric Chapel N and that on August 28, 2016 the horse raced in the 8<sup>th</sup> race at Windsor Fair, and he admitted to the presence of Total Carbon Dioxide in the horses system. Mr. Bobrow made a motion to consolidate the violations. AAG, Guay stated that procedurally if the department agrees they can move through the other two violations and the Commission will do a penalty phase for each case independently. Mr. Bobrow stated that he would have Mr. Hitchcock admit to the violations and have separate penalties and make just one argument. AAG, Guay stated to Mr. Jennings that Mr. Bobrow would have his client admit to all violations and rather than having his client say the same argument three times. He would make the argument one time and the Commission will take up each violation possibly as a separate violation. There is no agreement that the three violations would be one violation. Mr.

Jennings stated that he does not object. AAG, Guay grants the consolidation of cases MSHRC 15, 19, and 24. He asked Mr. Jennings to present the exhibits for admission. Mr. Jennings presented the following exhibits for 2016 MSHRC 19. Exhibit 1, Notice of Hearings; Exhibit 2, Trainer License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Laboratory Certificate of Analysis, and Exhibit 8, CMR-017 Chapter 11, Section 3. AAG, Guay admitted these exhibits without objection. Mr. Jennings presented the following exhibits for 2016 MSHRC 24. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Laboratory Certificate of Analysis; Exhibit 8, Maxxium Laboratory DNA Report, and Exhibit 9, ARCI Guidelines. AAG, Guay admitted these exhibits without objection. Mr. Bobrow presented Licensee Exhibit A which is a document with violations from another state. Licensee Exhibit B is a document from Maine's penalty box 2015. Licensee Exhibit C Page 6 is Mr. Hitchcock's racing statistics. These 3 exhibits were admitted into the record. Mr. Bobrow explained the exhibits and what could potentially happen if Mr. Hitchcock was to get Maine racing days because he would not be able to race in another jurisdiction. AAG, Guay asked Mr. Jennings what his recommendation would be. Mr. Jennings stated with respect to penalties what you have in front of you is two TC02 violations. Those are Class B as defined in Chapter 17. The state recommends for a 1<sup>st</sup> and 2<sup>nd</sup> offense on those two. On the case of the Prednisolone, that is a Class C penalty which would be a 2<sup>nd</sup> offense. He pointed out that Allie Hiscock's decision and order occurred prior to the effective date of the amended rule. Commissioner Varney asked what the recommendation would be for the Class C penalty. Mr. Jennings stated for a 2<sup>nd</sup> offense it would be 15 day suspension, \$1,000.00 fine, and the return of the purse. On the Class B penalties, it would be a 2<sup>nd</sup> offense with a 30 day suspension, \$1,000.00 fine, and return of the purse, and 3<sup>rd</sup> offense with a 60 day suspension, \$2,500.00 fine, and the return of the purse. AAG, Guay closed the hearing for deliberations. Commissioner Varney asked Mr. Jennings the days that Mr. Hitchcock received if they normally give racing day suspensions. Mr. Jennings stated that they do a little of each. If you give a year suspension, that would be a calendar year. If you give 15 day suspension, that would be race days. Commissioner Varney stated that he doesn't recall giving race days. AAG, Guay stated that the Commission has consistently said days and not race days. Mr. Jennings stated that if the suspension occurs on the off season they don't give race days. Mr. Bobrow stated that any day that racing is occurring in the US is a racing day. He thinks that he interprets it as days based on the fact that it prevents anybody from racing in any location once the penalty goes into effect. Commissioner Graham stated that he was having difficulty reading the exhibits and wanted to know about the level of the substance. Mr. Jennings stated that there is no threshold for Prednisolone. AAG, Guay reopened the hearing for additional evidence. He gave Dr. Matzkin his oath. Commissioner Varney asked Dr. Matzkin about the level of Prednisolone found in the horse. Dr. Matzkin stated that it is very high. Mr. Bobrow asked Dr. Matzkin if every horse would respond to that type of treatment differently. Would you agree with that? Dr. Matzkin stated, slightly. Mr. Bobrow stated that a high level could be indicative of the horse as opposed to what was given to the horse. Dr. Matzkin stated not in this case. This drug is one that is used for intra-articulate joint injections. It is an interesting category because the Maine rules haven't chosen to test down to the levels that most jurisdictions do for this drug. AAG, Guay closed the hearing for deliberations. Commissioner Varney made a motion to fine Mr. Hitchcock \$3,000.00, 30 days for each offense to run concurrently to start today, if agreed by the licensee, and return of the purses. Commissioner Graham seconded. Commissioner McFarland asked to amend the motion to require repayment of purses to be paid prior to licensing. AAG, Guay stated that if there are any owed monies people are not eligible for licensing as a matter of rule, so that is in fact the way our rules operate. Commissioner McFarland stated that he just wanted to clarify that that does in fact happen. Vote 4-0.

- b. **RE: Michael Hitchcock, Complaint Number 2016 MSHRC 18.** Mr. Hitchcock is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Hitchcock is the trainer of record for the horse “Kid Courageous A”. A blood sample obtained from Kid Courageous A following the Second Race at Scarborough Downs on September 9, 2016 disclosed the presence of Testosterone at an elevated level. Michael Hitchcock was present. David Bobrow was present and representing Mr. Hitchcock. AAG, Guay qualified the Commissioners. Mr. Bobrow stated that Mr. Hitchcock is not disputing the positive test but he did not provide the substance to the horse. AAG, Guay stated that they would get the admissions on the record and go to the penalty phase. Do you want to consolidate the cases? Mr. Jennings stated that they would move forward as separate cases. AAG, Guay asked if there were any objections up to this point. Both parties stated no. AAG, Guay asked if there were any exhibits that they would like to admit into the record. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Laboratory Certificate, and Exhibit 8, ARCI Guidelines. AAG, Guay admitted the eight exhibits without objection. Mr. Bobrow had no exhibits. AAG, Guay gave Mr. Hitchcock his oath. He asked Mr. Hitchcock if he admits that on September 9, 2016 that he was the trainer of record of the horse Kid Courageous A, and on September 9, 2016 that the horse raced at Scarborough Downs, and do you dispute that there was a laboratory finding that showed the presences of Testosterone. Mr. Hitchcock stated yes. AAG, Guay asked Mr. Hitchcock if he admits to the violation. Mr. Hitchcock stated yes. AAG, Guay stated that they are now in the penalty phase. Mr. Bobrow stated that this horse had subsequent positive test. He asked Mr. Greenleaf if the levels showed a decline. Mr. Greenleaf stated that the levels did decline. Commissioner Varney asked Mr. Greenleaf what the level was when it was tested. Mr. Greenleaf stated 150 pg. Commissioner McFarland stated to Mr. Hitchcock that he bought the horse on September 2, 2016 and it raced regularly in New York. He asked if he had the horse tested. Mr. Hitchcock stated that he did not have the horse tested. AAG, Guay asked if there were any further questions or arguments. There was nothing further from either party. Mr. Jennings stated that the department recommends in the first case a Class B penalty which is for a first offense, \$500 fine, and return of the purse as stated in Chapter 17, Category B penalties. Mr. Bobrow stated that he is concerned that there is no mandatory minimum penalty. AAG, Guay stated that he would close the hearing for the penalty phase. Commissioner Varney asked for any comments or a motion. Commissioner Graham stated that he has a concern that you buy or claim a horse and race within seven days and you have a positive. Commissioner Varney stated that he agrees with Commissioner Graham. Commissioner Varney made a motion to a \$500 fine, and return of the purse. Commissioner Graham seconded. Vote 4-0.
- c. **RE: Michael Hitchcock, Complaint Number 2016 MSHRC 19.** Mr. Hitchcock is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Hitchcock is the trainer of record for the horse “Allamerican Dice”. A pre-race blood sample obtained from Allamerican Dice prior to the Sixth Race at the Oxford Fair on September 15, 2016 disclosed the presence of Total Carbon Dioxide at an elevated level. **See Complaint Number 2016 MSHRC 15.**
- d. **RE: Michael Hitchcock, Complaint Number 2016 MSHRC 24.** Mr. Hitchcock is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Hitchcock is the trainer of record for the horse “Roddy’s Nor’Easter”. A blood sample obtained from Roddy’s Nor’Easter following the Seventh Race at the Cumberland Fair on September 30, 2016 disclosed the presence of Prednisolone. **See Complaint Number 2016 MSHRC 15.**
- e. **RE: Gerald Laughlin, Complaint Number 2016 MSHRC 22.** Mr. Laughlin is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Laughlin is the trainer of record for the horse “Kid Courageous A”. A blood sample obtained from Kid Courageous A following the Eighth Race at the Farmington Fair on September 23, 2016 disclosed the presence of

Testosterone at an elevated level. Gerald Laughlin was not present. Megan Laughlin was present for Mr. Laughlin. AAG, Guay gave Ms. Laughlin her oath. AAG, Guay consolidated the two hearings. There were no objections to the consolidation. AAG, Guay qualified the Commissioners. Mr. Jennings presented the following exhibits for Complaint Number 2016 MSHRC 22. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Laboratory Certificate of Analysis, and Exhibit 8, ARCI Guidelines. Mr. Jennings presented the following exhibits for Complaint Number 2016 MSHRC 23. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Laboratory Certificate of Analysis, and Exhibit 8, ARCI Guidelines. AAG, Guay admitted both exhibits from complaint number 2016 MSHRC 22 and 23. Mr. Jennings stated that the prohibited substance was above the threshold. Exhibit 7 detected the substance at 62 ng on September 23, 2016. AAG, Guay asked questions of Mr. Jennings. Mr. Jennings stated that this is the same horse that Mr. Hitchcock had a positive test for testosterone, and suggested that these cases be treated as one complaint. AAG, Guay asked Ms. Laughlin if she objected to treating both cases as one complaint. Ms. Laughlin stated no. AAG, Guay made a motion to grant the consolidation. He closed this part of the hearing. Commissioner Varney asked for a motion. Commissioner Graham made a motion to find Mr. Laughlin in violation. Commissioner Reed seconded. Vote 4-0. AAG, Guay asked Mr. Jennings what his recommendation was. Mr. Jennings stated that when a person buys or acquires a horse and if you as the Commission embrace a policy by which you hold the trainer not accountable for drugs that are administered prior to the acquisition of that horse, the message that some people will receive because some people are inclined to try to find advantages in winning is that here's how we are going to do it now. As soon as they acquire a horse, they are going to load it up with everything they've got and they are going to say guess what I didn't do it. It was in that horse before I got it, so it's a double edge sword. What Mr. Jennings is suggesting to you is you've got to think about the message of how people are going to interpret your decisions with regards to this idea that potentially a policy in which a person acquiring a horse is not accountable for what's in that horses system when they race. We already said that we believe this should be treated as one violation. It is highly unlikely that they administered this drug. He recommended a \$500.00 fine, 15 day suspension, and loss of both purses. AAG, Guay asked Ms. Laughlin if she had a statement. Ms. Laughlin stated that they claimed the horse on September 9, 2016 and they drew blood on the horse. They did not know that there were two separate tests. AAG, Guay stated that this is an unusual case in that the horse had been determined that it had an elevated level before. In terms of presidential value could this be carved out in writing the decision that because it was known that the horse already had the level in its system? In terms of violation that's pretty clear. Mr. Jennings stated that it leaves a crack in the door. AAG, Guay stated that your answer doesn't provide enough of a carve out. Mr. Jennings called Dr. Matzkin. AAG, Guay gave Dr. Matzkin his oath. Commissioner Graham asked Dr. Matzkin if these levels are consistent. Dr. Matzkin stated that it is very clear that the substance was in the horse when they acquired it. He disagreed with Mr. Jennings. In this case they knew that it was there already. AAG, Guay closed the hearing for deliberations. Commissioner Graham made a motion to that Mr. Laughlin return both purses on both races before a license can be issued. AAG, Guay stated that he could put in the order if you all agreed for further proceedings this shall not be considered a first violation. The Commission members agreed with what AAG, Guay stated. Commissioner Varney seconded. Vote 4-0.

- f. **RE: Gerald Laughlin, Complaint Number 2016 MSHRC 23.** Mr. Laughlin is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Laughlin is the trainer of record for the horse "Kid Courageous A". A blood sample obtained from Kid Courageous A following the

Seventh Race at the Oxford Fair on September 16, 2016 disclosed the presence of Testosterone at an elevated level. **See Complaint Number 2016 MSHRC 22.**

**5. Adoption of Proposed Amendment to Chapter 11**

Mr. Jennings stated that on page 13 in Chapter 11, Section 4.4 this is the only change in the chapter. There was no public hearing and no comments were received. He asked the Commissioners if there was a consensus to adopt this change. The Commission members agreed. Commissioner Graham made a motion to adopt Chapter 11, the basis statement, the summary of comments, and the impact on small businesses. Commissioner McFarland seconded. Vote 4-0.

**6. Consideration of Proposed Amendment to Chapter 9**

Mr. Jennings stated to the Commissioners if they support this change he will file the paperwork.

Diann Perkins stated that the Maine Standardbred Breeders and Owner's Association membership discussed that all horse's noses should be on the gate.

Wendy Ireland read the information contained in the handout. She also stated that there is a safety concern to have trailers. The membership decided that it didn't matter if the races were betting or non-betting races. They just want a fair shake at the gate. Commissioner McFarland stated that he has mixed feelings about this change. His biggest concern is the short fields. The OTB facilities have said that when the 5 and 6 horse fields come on the TV's their bet goes down drastically. Most bettors go to the races to make money. Commissioner Varney asked if the major concern was for safety. Ms. Ireland stated yes. She stated that Skowhegan goes eight wide and they probably shouldn't. We are losing owners in the industry, but the biggest complaint they have is that the owners want their horse to be competitive too. Commissioner Varney stated that the Commissioners have agreed to have a public hearing on Chapter 9.

**7. Approval of the Maine Standardbred Breeders Sire Stakes Race Dates**

Diann Perkins passed out a handout of the Sire Stakes Schedule. She addressed a few concerns about the venues. Commissioner Varney stated to Ms. Perkins to address those concerns in a letter to each director of racing. After review of the schedule, Commissioner McFarland made a motion to approve the 2017 Sire Stakes Schedule as presented by the MSBOA. Commissioner Reed seconded. Vote 3-1. Commission Graham opposed.

**8. Consideration of Delegation of Prohibited Substance Cases When the Licensee Agrees to the Minimum Penalty**

Mr. Jennings asked the Commission if they wanted to delegate the authority to the staff to negotiate consent agreements to those cases that were Class C only. Commissioner Varney stated that would be a great idea. AAG, Guay stated that Mr. Jennings needs to present the consent agreement to the Commission for approval.

**9. Schedule of Future Meetings:**

January 25, 2017  
February 24, 2017

**10. Adjourn**  
12:55 p.m.